

Office of Personnel Management

§ 900.404

the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(c) *Federal financial assistance* includes:

- (1) Grants and loans of Federal funds;
- (2) The grant or donation of Federal property and interests in property;
- (3) The detail of Federal personnel;
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in the property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient; and
- (5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) *Primary recipient* means a recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) *Program* includes a program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training or other services whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance are deemed to include a service, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet the matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or non-Federal resources.

(f) *Recipient* may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under a program.

(g) *Director* means the Director of the Office of Personnel Management, or any person to whom he has delegated his authority in the matter concerned.

§ 900.404 Discrimination prohibited.

(a) *General*. A person in the United States shall not, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, a program to which this subpart applies.

(b) *Specific discriminatory actions prohibited*. (1) A recipient under a program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin—

(i) Deny a person a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of a service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies an admission, enrollment, quota,

eligibility, membership, or other requirement or condition which persons must meet in order to be provided a service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under a program or the class of persons to whom, or the situations in which, the services, financial aid, other benefits, or facilities will be provided under a program, or the class of persons to be afforded an opportunity to participate in a program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include a service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(5) Examples demonstrating the application of the provisions of this section to certain programs receiving Federal financial assistance from OPM are contained in appendix C of this subpart.

(6) (i) In administering a program regarding which the recipient had previously discriminated against persons on the ground of race, color, or national origin, the recipient shall take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of prior discrimination a recipient in administering a program shall take affirmative action as required by OPM to overcome the effect of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(iii) Any affirmative action under this paragraph shall be consistent with the principles stated in the Intergovernmental Personnel Act of 1970, 84 Stat. 1909.

(c) *Employment practices.* (1) When a primary objective of a program of Federal financial assistance to which this subpart applies is to provide employment, a recipient or other party subject to this subpart shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by OPM which have as a primary objective the providing of employment include those set forth in appendix B to this subpart.

(3) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in the employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject

them to discrimination under, the program receiving Federal financial assistance. The provisions of paragraph (c)(1) of this section apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishments of the objectives of title VI or this subpart.

§ 900.405 Assurances required.

(a) *General.* (1) An application for Federal financial assistance to carry out a program to which this subpart applies, except a program to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this subpart. Every program of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance is sought for the

construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. OPM shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. When no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by OPM to revert title to the property in the event of a breach of the covenant where, in the discretion of OPM, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on property for the purposes for which the property was transferred, OPM may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.